THE HON'BLE SRI JUSTICE D.S.R.VARMA
AND
THE HON'BLE SRI JUSTICE K.C. BHANU

WRIT PETITION No.25209 of 2007

Dated : 28-11-2007

Between :

V. Nagamma

… Petitioner/s

And

The Chief Post Master General,
A.P. Circle,
Hyderabad and 3 others.

…Respondent/s

THE HON'BLE SRI JUSTICE D.S.R. VARMA
AND
THE HON'BLE SRI JUSTICE K.C. BHANU

WRIT PETITION No.25209 of 2007

ORAL ORDER : (per the Hon'ble Sri Justice D.S.R. Varma)

Heard learned counsel for the petitioner and the learned Assistant Solicitor General of India, appearing for the respondents.

2. This Writ of Certiorari is filed seeking to quash the order of the Central Administrative Tribunal, Hyderabad Bench, Hyderabad (for brevity 'the Tribunal'), passed in O.A.No.1108 of 2004, dated 14-11-2007, dismissing the O.A., filed seeking to regularise the services of the petitioner as Grameena Dock Sevak Branch Post Master (for brevity 'GDS BPM') by setting the proceedings of fourth respondent, dated 30-09-2004, terminating

her services as GDS BPM.

3. The case of the petitioner, in brief, is that her husband viz., A.Ramanaiah was originally appointed as GDS BPM on regular basis. Since the husband of the petitioner was on leave, as provided under the rules in force, the petitioner, who is no other than the wife of the original incumbent, was appointed as a substitute GDS BPM during the leave period of her husband. Subsequently, since the husband of the petitioner got selection as Village Administrative Officer, he offered his resignation on 09-05-2002 and in his place one Sri B.Vengaiah was appointed as GDS BPM, who was earlier performing the duties of Grameena Dock Sevak Mail Carrier/Delivery Agent (for brevity 'GDS MC/DA'). The resignation of the husband of the petitioner was accepted in December, 2002. But, the petitioner has been continuing as substitute in the post of GDS BPM even after 01-12-2002 i.e., even after the date of her husband ceases to be a regular incumbent. Subsequently, vide proceedings dated 15-01-2003, she was appointed as accrued substitute during the leave period of Sri P.Vengaiah from 01-12-2002 to 31-12-2002 on condition that her services shall be terminated at any time without assigning any reason. Consequent upon the prescribed period therein, she continued to work as substitute for a period of two years. Thereafter, vide proceedings dated 30-09-2004, the services of the petitioner have been terminated. Challenging the said orders of termination, the petitioner approached the Tribunal by way of filing O.A.No. 1108 of 2004 and the Tribunal, without accepting the contention of the petitioner, dismissed the O.A., by order dated 14-11-2007. Hence the present writ petition.

4. The issue involved in this writ petition is very simple. The arrangement of appointing the GDS BPM is by two ways viz., (1) regular appointment, and (2) substitute appointment. The regular

appointments will be made by the competent authority and the substitute appointments will be made by the regular incumbents in a specified contingencies. For the commissions and omissions by such substitute appointees, the principal employer i.e., the regular incumbent is vicariously liable. Therefore, it is obvious that the substitute does not possess any vested right to continue in the said post and it is only at the discretion of the regular incumbent such a substitute employee would continue.

5. It is not in dispute that the husband of the petitioner appointed the petitioner as substitute with effect from 01-06-2001. Later on he resigned for the said post of regular GDS BPM and the same was accepted in the month of December, 2002. Therefore, he ceases to be a regular GDS BPM with effect from 01-12-2002. When once the regular incumbent ceases to be an employee, by necessary implication, the appointment of a substitute made by such incumbent, who is no longer in service, automatically ceases. In fact, there need not be any order by the competent authority, in this regard.

6. Therefore, when there was no vested right accrued for the petitioner subsequent to 01-12-2002, still, she was permitted to continue in the same capacity by the competent authority, vide letter dated 15-01-2003, wherein it was mentioned that her services can be terminated at any time without assigning any reason, and subsequently proceedings were issued informing the petitioner that her services would be discontinued by 01-10-2004. However, having filed the O.A., by virtue of the interim orders of the Tribunal, she has been continuing in the same capacity as substitute as on date.

7. From a perusal of the impugned order of the Tribunal, it appears that the petitioner made frenetic plea that the pay rolls

from 2003 would show that she was officiating as EDMC/DA and, therefore, it should be understood that the respondents, on their own, made this arrangement and consequently she was discharging the functions of GDS BPM. However, the said contention was not accepted by the Tribunal on the ground that in the same proceedings, on which the petitioner was relying, it appears, a mention was clearly made that the competent authority is at liberty to make alternate arrangement and also it can make an order of making combination of duties having regard to the work load.

8. However, it was found by the Tribunal that the petitioner though worked as GDS BPM for sometime, such service was only in the capacity of substitute, nominated by the regular incumbent during his leave period.

9. From the above sequel of events, it is clear that the petitioner has been continuing as a substitute either as GDS BPM or GDS MC/DA, only in the capacity of substitute, but not as a regular employee. It was further made clear by the competent authority that her continuation in the said capacity was only till some alternate arrangement is made and they were absolutely at liberty to terminate the services of the petitioner at any time without assigning any reason.

10. This is obviously because the substitute was not accountable for any commissions and omissions made by him/her and any such lapses could be attributable only to the principal employer. Merely because the petitioner worked in two different capacities, such functioning in those two capacities had flown from the resignation of the original regular incumbent, who is no other than the husband of the petitioner. All the subsequent appointments of the petitioner were under different contingencies,

may be, by virtue of the intervention of the Tribunal or by virtue of the alternate arrangement made by the competent authority. But, all these subsequent arrangements do not change the status of the petitioner as 'substitute' and so long as the status of 'substitute' is attached to the petitioner, it is needless to say that there is no vested right conferred on her for continuation of her services.

11. It is the specific contention of the learned counsel for the petitioner that the appointment of the petitioner as substitute beyond the prescribed period is contrary to the instructions issued by the respondents in letter, dated
21-10-2002, governing the field. The said contention of the learned counsel cannot be countenanced, for the simple reason that any deviation from the instructions would be either illegal or irregular. Merely because an illegality has been committed contrary to the rules or the instructions, the same cannot be perpetuated. The established principle that there cannot be any estoppel against law is squarely applicable in the present circumstances. Therefore, even on this ground, the petitioner cannot claim any right.

12. From a perusal of the impugned order of the Tribunal, we could see that after considering all these aspects in a right perspective, the Tribunal dismissed the O.A., and the same does not call for any interference.

13. For the foregoing, there are no merits in the writ petition and the same is liable to be dismissed.

14. In the result, the writ petition is dismissed, at the stage of admission. There shall be no order as to costs.

_____

JUSTICE D.S.R. VARMA

_____

JUSTICE K.C. BHANU

28-11-2007
Msr

THE HON'BLE SRI JUSTICE D.S.R.VARMA
AND
THE HON'BLE SRI JUSTICE K.C. BHANU

WRIT PETITION No.25209 of 2007

28-11-2007
(Msr)